

FROM

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November 26, 2008

Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 6097

**RESPONSE BY RESPONDENT JOSEPH BURNETT**

On November 11, 2008, Joseph Burnett received a letter from Jeff Jordan notifying him of a complaint against Roy Carter for Congress which alleges that Mr. Burnett may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Attached is a statement of designation of counsel signed by Mr. Burnett. Mr. Burnett hereby requests that this action be dismissed as it relates to him.

**Background**

Mr. Burnett is a professional musician and songwriter. He was a supporter of Roy Carter, a candidate for Congress in the 5<sup>th</sup> district of North Carolina in the 2008 general election. Mr. Burnett lawfully contributed \$2,300 to Mr. Carter's campaign. This is the only contribution, monetary or non-monetary, that Mr. Burnett has made to the Carter campaign.

The complaint against the Roy Carter for Congress Committee makes two statements about Mr. Burnett that suggest that he may have violated the Act. Both statements are erroneous:

1. "Mr. Burnett provided ten limited edition packages for a concert with Alison Krauss, Robert Plant, and T Bone Burnett." This statement is false. It appears to be based on an email from the Carter campaign that erroneously suggests that Mr. Burnett provided concert tickets to the campaign. Mr. Burnett did not provide tickets or anything else of value to the Carter campaign beyond the lawful contribution that has already been reported.

2. "Mr. Burnett also provided Roy Carter with an autographed guitar to auction off to benefit his campaign." This statement is also false. Mr. Burnett has never provided an autographed guitar to Mr. Carter, nor has he ever autographed a guitar for the purpose of allowing it to be auctioned by the campaign. Mr. Burnett signed a guitar for a third party, who apparently donated it to the campaign for auction. At the time that Mr. Burnett signed the guitar, he had no knowledge of how it would be used.

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Furthermore, even if Mr. Burnett had autographed an item for the campaign, Mr. Burnett would not have made contribution by doing so. Mr. Burnett regularly offers his autograph at no charge to any person who requests it. A contribution is defined as "a gift...of anything of value made by any person for the purpose of influencing any election for Federal office." 11 CFR 100.52(a). The value of an in-kind contribution, such as an autograph, is the "usual and normal charge" for the good or service. 11 CFR 100.52(d)(1). Because the "usual and normal charge" for Mr. Burnett's autograph is zero, Mr. Burnett would not have made a contribution even if he had provided an autograph to the Carter campaign.

Enclosed is a sworn declaration in which Mr. Burnett affirms that he did not provide the ticket packages or autographed guitar to the Carter campaign.

**The complaint fails to comply with the Act and FEC regulations**

The requirements for a complaint filed with the Commission are outlined in 11 CFR 111.4. The complaint against the Roy Carter for Congress Committee does not satisfy the requirements of this section as to Mr. Burnett, and therefore this matter must be dismissed as it relates to him.

**The complaint does not identify Mr. Burnett as a respondent**

The Commission's regulations at 11 CFR 111.4(d) state that "the complaint should conform to the following provisions...(1) It should clearly identify as a respondent each person or entity who is alleged to have committed a violation." The complaint filed with the Commission in this case identifies only the Roy Carter for Congress Committee as a respondent. The complaint does not identify Mr. Burnett as a respondent.

This is not a mere technical mistake. The contents of the complaint are sworn to and signed in the presence of a notary public as required by 11 CFR 111.4(b)(2). However, because the complaint names only the Roy Carter for Congress Committee as a respondent, Mr. Burnett cannot be named as a respondent in this matter. To do so would broaden the complaint beyond what has been sworn to and signed, which would be impermissible under 11 CFR 111.4(b)(2).

Furthermore, it is likely that the decision not to name Mr. Burnett as a respondent led to the factual errors identified above. It would be entirely inappropriate for the Commission to subject Mr. Burnett to an investigation based on a complaint that did not purport to identify him as a respondent, and therefore contains allegations against Mr. Burnett that were not verified. The person filing this complaint was focused on the allegations against the Carter campaign, and apparently believes that someone provided the campaign with tickets and an autographed guitar. However, the fact that the complaint does not name Mr. Burnett as a respondent likely explains why the person filing the complaint failed to properly ascertain the identity of the person who provided those items.

As discussed in the Explanation and Justification published by the Commission when it promulgated 11 CFR 111.4, "Subsection (b) sets forth the statutory requirements with which a complaint must comply in order for the Commission to act upon it. A complaint is improper if it does not comply with this subsection, and shall not be acted upon by the Commission." 45

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Fed. Reg. 15088 (Mar. 7, 1980). Because subsection (b) has not been satisfied as it relates to Mr. Burnett, the Commission may not name him as a respondent in this matter.

The complaint fails to differentiate between statements based upon personal knowledge and statements based upon information and belief.

Commission regulations require that a complaint "differentiate between statements based upon personal knowledge and statements based upon information and belief." 11 CFR 111.4(c). The complaint filed in this matter fails to make this critical distinction. The complaint states that "The foregoing is correct and accurate to the best of my knowledge, information and belief." The complaint does not distinguish between facts based upon personal knowledge and statements based upon information and belief, and therefore must be dismissed.

It is impossible for Mr. Burnett to respond fully to the claims in the complaint when the complaint fails to adhere to the most basic procedural requirements. Without distinguishing between those statements based upon personal knowledge and those based upon information and belief, the person filing the complaint has denied Mr. Burnett the ability to effectively refute these claims. Mr. Burnett has the right under the Act to demonstrate that no action should be taken against him. 2 U.S.C. 437g(a)(1). The Commission should not allow the person filing the complaint to deny Mr. Burnett this right by structuring the complaint in a manner that fails to comply with the law. The Commission has an obligation to protect Mr. Burnett's statutory right to defend himself by dismissing a complaint that is procedurally defective.

### Conclusion

The complaint filed with the Commission relies solely on erroneous statements as its basis for the suggestion that Mr. Burnett has violated the Act. In addition, the complaint fails to satisfy the Act and Commission regulations as they apply to Mr. Burnett. Therefore, we respectfully request that this matter be dismissed as it relates to Mr. Burnett.

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